

OCT 29 2009

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
VS.)	ORDER
)	
WILLIAM A. MILLER,)	
)	CAUSE NO. A-1839
)	
RESPONDENT.)	

This matter came on for hearing on the 20th day of October 2009 before Eric Dunning, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Martin W. Swanson. William A. Miller ("Respondent") was not present and was not represented by an attorney. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. The Rules of Evidence were not requested and the hearing was governed accordingly. Evidence was received, and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed resident Nebraska insurance producer, since January 22, 2008, whose current registered business address with the Department is Bankers Life and Casualty, 14507 California Street, Omaha, Nebraska, 68154 and whose registered home address with the Department is 1011 North 90th Street, Apartment 6, Omaha, Nebraska 68114, as evidenced by Exhibit #2.

2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. On or about July 17, 2009 the Petition and Notice of Hearing were served upon the Respondent by mailing the same to his address of record by certified mail, return receipt requested, as evidenced by Exhibit #1.

4. As evidenced by Exhibit #3, a complaint was filed with the Department alleging that Respondent, in May 2008, convinced a 75 year old life insurance applicant ("Applicant") to replace paid in full life insurance policies with a policy with Respondent's company, Bankers Life and Casualty Company ("Bankers"). Applicant died of cancer September 28, 2008. Applicant also had Alzheimer's disease. Bankers denied the claim on the grounds that Applicant was uninsurable and the policy should not have been issued.

5. As evidenced by a letter included in Exhibit #3 dated April 3, 2009, Bankers responded to a Department inquiry that the application for a single premium whole life insurance policy was taken by the Respondent and another insurance producer Tarah Schoell ("Schoell"). Bankers response indicated that as an underwritten product, the application for the policy asks about the applicant's medical history, and based on those responses Applicant was approved with an effective date of May 22, 2008. The processing of the policy was delayed pending receipt of funds until September 5, 2008. On October 3, 2008, Bankers received notice that Applicant had died. Upon receipt of the claim, Bankers initiated a contestable investigation and found, via medical records, that Applicant had been treated for Alzheimer's disease prior to application for the policy. On this ground, Bankers voided the policy and refunded premium to the beneficiary. Bankers' officials met with Respondent and Schoell. Schoell stated that Applicant did not mention being diagnosed with Alzheimer's disease but did mention taking the medication Aricept. Aricept is prescribed for the treatment of Alzheimer's disease. Schoell claimed that she did not know this. Bankers paid the claim in

the amount of the face value of the policy, but did not pay accrued interest. Schoell resigned from Bankers, and Respondent transferred to a different branch office.

6. As evidenced by an attachment to the letter included in Exhibit #3 dated April 3, 2009, on the application, the box for Alzheimer's disease was not checked "yes" by agents, nor was the box which asked whether or not the applicant taking any prescription medication despite Applicant telling Respondent and Schoell that she was taking Aricept. Both Schoell and Respondent signed the application as the agents and split the commission.

7. Schoell's signed Statement, included in Exhibit #3, dated April 17, 2009, states that Schoell met with Applicant for the first time on May 12, 2008, and that Respondent was with her at that meeting. They began the discussion talking about Medicare and thereby discovered that Applicant was taking Aricept. At that point Schoell states in her statement that Respondent "took over the appointment." Schoell claimed that she was convinced by Respondent and by Applicant that the Aricept was for "depression." Respondent, according to Schoell, suggested the product by means of a 1035 exchange. Schoell filled out the application was directed by Respondent to check "no" to the question about prescription drug use on the application.

8. Respondent's explanation, included in Exhibit #3, dated April 3, 2009 to Dennis Riley of Bankers, asserted that he did not complete or take the "fact finder" on the case. In addition, he asserted that he did not take the application. Respondent admitted that he was present when the application was taken and should have reviewed the fact finder more carefully. He stated that had he done so, he would have seen the notation for the Aricept medication which, had he seen it, would have made him investigate further.

9. In a letter from Bankers, included in Exhibit #3, dated May 21, 2009, Bankers informed the Department that Schoell had been terminated, and that the agents involved had given

conflicting statements about the solicitation meeting with Applicant. According to the letter from Bankers, Schoell was the lead agent in this appointment since she had made the May 22, 2008 appointment with Applicant. Bankers asserted that Schoell completed the fact finder and the application. Respondent asserted, according to Bankers, that he did not tell Schoell to improperly complete the application and had no recollection of Aricept being mentioned.

10. As evidenced by Exhibit #3, Respondent has relocated to the Cedar Rapids, Iowa office of Bankers.

DISCUSSION

The Petitioner provided evidence that Schoell and Respondent signed the application as the agents and split the commission for the sale to Applicant. Respondent asserted that he did not take the application despite the fact that he signed the application as one of the agents who accepted the application. Although Bankers asserted that Schoell was the lead agent in the appointment since she had made the May 22, 2008 appointment with Applicant, and that Schoell completed the fact finder and the application, it appears to the hearing officer that Respondent played a role in the appointment, and received commission for the sale.

Nebraska law provides a range of penalties applicable in this case including revocation or suspension of the insurance producer license, and additionally may impose an administrative penalty of up to \$1000 per violation. The fact that Respondent has had no prior disciplinary actions taken against him should be balanced against the fact that Respondent's license had recently initially been granted in January 2008. In addition, Bankers paid the claim in the amount of the face value of the policy. As such, the hearing officer declines to suspend the insurance producer license, but believes that an administrative penalty should be imposed.

CONCLUSIONS OF LAW

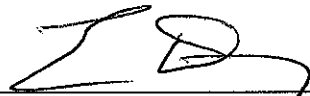
1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047 et seq.
2. The Department has personal jurisdiction over Respondent.
3. Respondent violated Neb. Rev. Stat. §§44-1525(1)(f), 44-1525(10), 44-4059(1)(b), 44-4059(1)(e), 44-4059(1)(g), and 44-4059(1)(h) as a result of the conduct set forth in Paragraphs 4 through 9 of the FINDINGS OF FACT.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the Respondent shall pay an administrative penalty of one thousand dollars (\$1000.00) within ninety days after the date the Director of Insurance signs this Order. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Respondent or the Department of Insurance to make application for such further orders as may be necessary.

Dated this 28^h day of October 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Eric Dunning, Hearing Officer

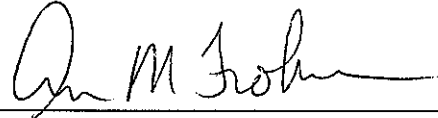
CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of

this Department in the matter of *State of Nebraska Department of Insurance v. William A. Miller*,
Cause No. A-1839.

Dated this 29th day of October 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Ann M. Frohman
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent at Bankers Life and Casualty, 14507 California Street, Omaha, Nebraska, 68154, by certified mail, return receipt requested and by first class United States Mail at his registered home address at 1011 North 90th Street, Apartment 6, Omaha, NE 68114, on this 29th day of October 2009.

